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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

FRANK HODGES, Individually and on  
Behalf of All Others Similarly Situated,  
  
Plaintiff,

v.

IMMERSION CORPORATION, VICTOR A.  
VIEGAS, RALPH EDWARD CLENTON  
RICHARDSON, STEPHEN M. AMBLER  
and DANIEL J. CHAVEZ,  
  
Defendants.

No. 09-cv-04073-MMC

CLASS ACTION

**NOTICE OF MOTION AND MOTION  
OF NORBERT MULLER FOR  
CONSOLIDATION OF RELATED  
ACTIONS, APPOINTMENT AS LEAD  
PLAINTIFF AND APPROVAL OF CO-  
LEAD COUNSEL; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF**

Date: December 11, 2009  
Time: 9:00 a.m.  
Courtroom 7, 19<sup>th</sup> Floor  
Honorable Maxine M. Chesney

MICHAEL POSNER, Individually and on  
Behalf of All Others Similarly Situated,  
  
Plaintiff,

v.

IMMERSION CORPORATION, VICTOR A.  
VIEGAS, CLENT RICHARDSON and  
STEPHEN AMBLER,  
  
Defendants.

No. 09-cv-04118-PJH

*[Captions Continue on Following Page]*

JASON BARRIOS, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

IMMERSION CORPORATION, VICTOR A.  
VIEGAS, STEPHEN M. AMBLER,  
DANIEL J. CHAVEZ and RALPH  
EDWARD CLENTON RICHARDSON,

Defendants.

No. 09-cv-04412-JW

STEVEN H. BUELL, on Behalf of Himself  
and All Others Similarly Situated,

Plaintiff,

v.

IMMERSION CORPORATION, VICTOR A.  
VIEGAS, STEPHEN M. AMBLER,  
DANIEL J. CHAVEZ and RALPH  
EDWARD CLENTON RICHARDSON,

Defendants.

No. 09-cv-04561-CRB

ANDREW BENSON, Individually and on  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

IMMERSION CORPORATION, VICTOR A.  
VIEGAS, CLENT RICHARDSON and  
STEPHEN AMBLER,

Defendants.

No. 09-cv-04744-HRL

**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE, that on Friday, December 11, 2009, at 9:00 a.m. or as soon thereafter as the matter can be heard, in the courtroom of the Honorable Maxine M. Chesney, situated at 450 Golden Gate Ave., San Francisco, California, proposed lead plaintiff Norbert Muller (hereinafter "Movant") will move, and hereby does move, for an order (a) consolidating the related actions, appointing Norbert Muller as lead plaintiff, and (b) approving Movant's selection of Kirby McInerney, LLP and Glancy Binkow & Goldberg LLP as co-lead counsel for the Class.

Movant seeks consolidation of the related actions pursuant to Federal Rule of Civil Procedure 42(a), and appointment as lead plaintiff and approval of co-lead counsel pursuant to the Securities Exchange Act of 1934, the Federal Rules of Civil Procedure and the Private Securities Litigation Reform Act of 1995 ("PSLRA"). This motion is based on this Notice, the attached memorandum of points and authorities, the declaration of Michael Goldberg and the Court's complete files and records in this action, as well as such further argument as the Court may allow at the hearing on this motion.

**MEMORANDUM OF POINTS AND AUTHORITIES**

Movant Norbert Muller respectfully submits the following memorandum of points and authorities in support of his motion for consolidation of related actions, appointment as lead plaintiff and approval of co-lead counsel.

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**STATUTES AND MISCELLANEOUS**

The Private Securities Litigation Reform Act of 1995 .....	<i>passim</i>
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**I. STATEMENT OF ISSUES TO BE DECIDED**

1. Whether consolidation of the above-captioned related actions is appropriate under Rule 42 of the Federal Rules of Civil Procedure when the related actions involve common questions of law and fact?

2. Whether Movant Norbert Muller has the largest financial interest in this case, has made a preliminary showing that he satisfies Rule 23 of the Federal Rules of Civil Procedure, and thus is the “most adequate plaintiff,” requiring his appointment as lead plaintiff for the class and approval of his selection of counsel pursuant to the PSLRA?

**II. FACTUAL BACKGROUND**

This is a securities class action on behalf of purchasers of the securities of Immersion Corporation (“Immersion” or the “Company”) between May 3, 2007 and July 1, 2009, inclusive (the “Class Period”), seeking to pursue remedies under the Securities Exchange Act of 1934 (the “Exchange Act”). Named as defendants are the Company and certain of its executive officers.

Defendant Immersion develops, manufactures, licenses and supports a range of hardware and software technologies and products that enhance digital devices with touch interaction. Plaintiff alleges that throughout the Class Period the defendants made false and/or misleading statements, and/or failed to disclose material adverse facts about the Company’s business, operations, and prospects. Specifically, defendants made false and/or misleading statements and/or failed to disclose that: (1) the Company overstated its income tax expense; (2) the Company improperly recognized revenue; (3) as a result, the Company’s revenue, accounts receivable, and financial results were overstated during the Class Period; (4) the Company’s financial results were not prepared in accordance with Generally Accepted Accounting Principles (“GAAP”); (5) the Company lacked adequate internal and financial controls; and (6),

1 as a result of the above, the Company's financial statements were materially false and misleading  
2 at all relevant times.

3 On February 28, 2008, Immersion shocked investors when it announced that the  
4 Company's previously filed condensed consolidated financial statements contained in  
5 Immersion's Forms 10-Q for the quarterly periods ended March 31, 2007, June 30, 2007, and  
6 September 30, 2007, should no longer be relied upon due to errors in the accounting of income  
7 taxes. Moreover, the Company disclosed that as a result of these errors the provision for income  
8 taxes for the three-, six- and nine-month periods ended March 31, 2007, June 30, 2007 and  
9 September 30, 2007, respectively, was understated by \$6.6 million, and that management  
10 concluded that the Company's Condensed Consolidated Balance Sheets, Condensed  
11 Consolidated Statements of Operations, Condensed Consolidated Statements of Cash Flows  
12 reported in Immersion's Quarterly Financial Statements, and related discussion of provision for  
13 income taxes in Management's Discussion and Analysis of Financial Condition and Results of  
14 Operations should be restated in order to correct these errors.

15 As a result of this news, the price of Immersion shares declined \$1.81 per share, or  
16 17.68%, to close on February 29, 2008, at \$8.43 per share, on unusually heavy volume.

17 Subsequently, on July 1, 2009, Immersion further shocked investors when it announced  
18 that the Audit Committee of the Board of Directors of Immersion was conducting an internal  
19 investigation into certain previous revenue transactions in the Company's Medical line of  
20 business. The Company further disclosed that, as a result of this investigation, Immersion's  
21 previously reported financial information could be materially impacted.

22 In reaction to this news, shares of Immersion declined \$1.14 per share, more than 23%, to  
23 close on July 1, 2009, at \$3.80 per share, on unusually heavy trading volume.

### III. PROCEDURAL HISTORY

Plaintiff Frank Hodges commenced the first of the above-captioned actions on September 2, 2009, and on that day counsel for plaintiff published a notice of the pendency of plaintiff's case on *Business Wire*, a widely circulated national business-oriented wire service. *See* Declaration of Michael Goldberg In Support of Motion of Norbert Muller for Consolidation of Related Actions, Appointment As Lead Plaintiff and Approval of Co-Lead Counsel (the "Goldberg Declaration") at Exhibit A.

In addition to the *Hodges* action, four actions subsequently were filed in this District naming the same core defendants, and alleging the same factual events and the same legal bases for their claims, specifically Sections 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended by the PSLRA, 15 U.S.C. §§78j(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission, 17 C.F.R. 10b-5 (collectively, the "Securities Actions"). On October 19, 2009, this Court issued an Order finding the above-captioned Securities Actions are related to each other, and to two shareholder derivative actions asserting breach of fiduciary duty claims on behalf Immersion Corporation<sup>1</sup>, pursuant to Civil L.R. 3-12(a). Each of the related Securities Actions is reflected above in the caption of this document.

Movant brings the instant motion for, *inter alia*, appointment as lead plaintiff in the Securities Actions, pursuant to the *Hodges* complaint and notice of pendency, and files this motion prior to expiration of the 60-day period from publication of plaintiff's September 2, 2009 notice.

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<sup>1</sup>The related shareholder derivative actions are *Bilodeau v. Viegas, et al.*, No. 09-cv-04291-RS (filed September 15, 2009), and *Semelis v. Richardson, et al.*, No. 09-cv-04599-RS (filed September 29, 2009).



1 **IV. ARGUMENT**

2 **A. The Related Actions Should Be Consolidated**

3 Consolidation pursuant to Federal Rule of Civil Procedure Rule 42(a) is proper when  
4 actions involve common questions of law and fact. *See Johnson v. Celotex Corp.*, 899 F.2d 1281,  
5 1284 (2nd Cir. 1990). The Court has broad discretion under this Rule to consolidate cases  
6 pending within its District. *Id.*

7  
8 The actions pending before this Court present similar factual and legal issues, as they all  
9 involve the same subject matter, and present the same legal issues. Each alleges the same  
10 violations of federal securities laws, and is based on the same wrongful course of conduct. Each  
11 names the Company and certain of its officers and/or directors as defendants. Because the actions  
12 arise from the same facts and circumstances and involve the same subject matter, the same  
13 discovery and similar class certification issues will be relevant to all Related Actions.  
14 Accordingly, consolidation under Rule 42(a) is appropriate.

15  
16  
17 **B. Norbert Muller Should Be Appointed Lead Plaintiff**

18 Section 21D(a)(3)(B) of the PSLRA provides the procedure for selecting lead plaintiff in  
19 class actions brought under the Exchange Act. The PSLRA directs courts to consider any motion  
20 to serve as lead plaintiff filed by class members in response to a published notice of class action  
21 by the later of (i) 60 days after the date of publication of the notice; or (ii) as soon as practicable  
22 after the Court decides any pending motion to consolidate. 15 U.S.C. §78u-4(a)(3)(B). The  
23 PSLRA provides a “rebuttable presumption” that the most “adequate plaintiff” to serve as lead  
24 plaintiff is the person or group of persons that:  
25  
26

27 (aa) has either filed the complaint or made a motion in response to a notice. . . ;  
28

(bb) in the determination of the Court, has the largest financial interest in the relief sought by the class; and

(cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

15 U.S.C. §78u-4(a)(3)(B)(iii).

As set forth below, Movant Norbert Muller satisfies all three of these criteria and thus is entitled to the presumption that he is the most adequate lead plaintiff for the Class.

### **1. Norbert Muller Is Making A Motion In Response To A Notice**

Plaintiff Frank Hodges commenced the instant action on September 2, 2009, and on that day, pursuant to §21D(a)(3)(A)(I) of the PSLRA, counsel for plaintiff Hodges published a notice of pendency of plaintiff's case on *Business Wire* – a widely circulated national business-oriented wire service<sup>2</sup> – announcing that a securities class action had been filed against defendants herein, and advising purchasers of Immersion stock that they had until November 2, 2009, to file a motion to be appointed as lead plaintiff. Norbert Muller files the instant motion pursuant to the *Hodges* complaint and published notice, and submits herewith his sworn certification attesting that he is willing to serve as representative of the Class and willing to provide testimony at deposition and trial, if necessary. *See* Goldberg Declaration, Exhibit B. Movant therefore satisfies the requirement of either filing a complaint or making a motion in response to a published notice. *See* 15 U.S.C. §78u-4(a)(3)(B)(i).

### **2. Norbert Muller Has The Largest Financial Interest In This Action**

The PSLRA requires a court to adopt the rebuttable presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief

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<sup>2</sup>*See Greebel v. FTP Software, Inc.*, 939 F.Supp. 57, 64 (D.Mass.1996).

sought by the class.” 15 U.S.C. §78u-4(a)(3)(B)(iii).

During the Class Period, Norbert Muller purchased 15,000 shares of Immersion at prices alleged to be artificially inflated by defendants’ materially false and misleading statements and omissions, and as result, Movant has suffered losses of \$196,161.20. *See* Goldberg Declaration, Exhibit C.

To the best of his knowledge, Norbert Muller believes that he has the largest known financial interest in this case of any Class member who timely filed an application for appointment as lead plaintiff, and thus satisfies the largest financial interest requirement to be appointed as lead plaintiff for the Class. *See* 15 U.S.C. §78u-4(a)(3)(B)(iii)(bb).

### **3. Norbert Muller Satisfies The Requirements Of Rule 23 Of The Federal Rules Of Civil Procedure**

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a party may serve as a class representative if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interest of the class.

Fed. R. Civ. P. 23(a).

In making its determination that a lead plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification. A *prima facie* showing that a PSLRA movant satisfies the requirements of Rule 23 is sufficient.

1 *In re Cavanaugh*, 306 F.3d 726, 730 (9<sup>th</sup> Cir. 2002). Courts thus limit their inquiry to the  
 2 typicality and adequacy prongs of Rule 23(a), and defer examination of the remaining  
 3 requirements until class certification. *City of Harper Woods Employees Retirement System v.*  
 4 *AXT, Inc.*, 2005 WL 318813, \*3 (N.D. Cal. Feb. 7, 2005) (“When a court assesses a lead plaintiff  
 5 motion, the inquiry should be focused on the typicality and adequacy requirements of Rule 23”).  
 6

7 **a. Norbert Muller’s Claims Are Typical**

8 The Rule 23(a) typicality requirement is satisfied when a plaintiff’s claims arise from the  
 9 same event, practice or course of conduct that gives rise to other class members’ claims and  
 10 plaintiff’s claims are based on the same legal theory. *See Hanon v. Dataproducts Corp.*, 976 F.2d  
 11 497, 508 (9th Cir.1992).  
 12

13 Here, Norbert Muller’s claims are typical of the claims asserted by the Class. Norbert  
 14 Muller, like all members of the Class, alleges that defendants violated the Exchange Act by  
 15 publicly disseminating a series of false and misleading statements concerning Immersion’s  
 16 business, operations and prospects. Norbert Muller, like all of the members of the Class,  
 17 purchased Immersion shares during the Class Period at prices artificially inflated by defendants’  
 18 misrepresentations and omissions, and was damaged thereby. Thus, the claims of Norbert Muller  
 19 are closely aligned with other Class members’, and they are, therefore, typical of the other  
 20 members of the Class.  
 21  
 22

23 **b. Norbert Muller Is An Adequate Representative**

24 The adequacy of representation requirement of Rule 23 is satisfied where it is established  
 25 that a representative party “will fairly and adequately protect the interest of the class.”  
 26 Accordingly:  
 27  
 28

1 The Ninth Circuit has held that representation is “adequate” when counsel for the  
 2 class is qualified and competent, the representative’s interests are not antagonistic  
 3 to the interests of absent class members, and it is unlikely that the action is  
 collusive.

4 *Takeda v. Turbodyne Techs. Inc.*, 67 F.Supp. 2d 1129, 1133 (C.D. Cal. 1999) (citing *In re*  
 5 *Northern Dist of Cal., Dalkon Shield IUD Prod. Liab. Litig.*, 693 F.2d 847, 855 (9<sup>th</sup> Cir. 1982)).

6 The class representative must also have “sufficient interest in the outcome of the case to ensure  
 7 vigorous advocacy.” *Takeda*, 67 F. Supp. 2d at 1137 (citation omitted).

9 Norbert Muller has demonstrated his adequacy as lead plaintiff by evincing a strong desire  
 10 to prosecute this action on behalf of the Class, and has shown that he is willing and able to take an  
 11 active role in and control the litigation. Movant has communicated with experienced counsel  
 12 concerning this case and has made this motion to be appointed lead plaintiff. Movant is not  
 13 aware of any antagonism between his interests and those of other Class members. Moreover,  
 14 Movant has sustained substantial financial losses from his investments in Immersion securities  
 15 and is, therefore, extremely motivated to pursue the claims in this action. *See* Goldberg  
 16 Declaration, Exhibit C.

#### 19 **4. Norbert Muller Is Presumptively The Most Adequate Lead Plaintiff**

20 The presumption in favor of appointing Movant as lead plaintiff may be rebutted only  
 21 upon proof “by a purported member of the Plaintiffs’ class” that the presumptively most adequate  
 22 plaintiff:

24 (aa) will not fairly and adequately protect the interest of the class; or

25 (bb) is subject to unique defenses that render such plaintiff incapable of  
 26 adequately representing the class.

27 15 U.S.C. § 78 u-4(a)(3)(b)(iii)(I).

1 The presumption that Norbert Muller is the most adequate lead plaintiff is not, therefore,  
 2 subject to rebuttal. Movant believes that he has the largest financial interest in this case among  
 3 Class members who timely filed motions for appointment as lead plaintiff. The ability of Movant  
 4 to fairly and adequately represent the Class is discussed above. Movant is not aware of any  
 5 unique defenses defendants could raise against him that would render him inadequate to represent  
 6 the Class. In addition, Movant has selected and retained competent and experienced counsel to  
 7 represent him and the Class. *See Richardson v. TVIA, Inc.* 2007 WL 1129344, \*4-\*5 (N.D.Cal.  
 8 April 16, 2007)(“The adequacy requirement is met if there are no conflicts between the  
 9 representative and class interests and the representative's attorneys are qualified, experienced, and  
 10 generally able to conduct the litigation”). Accordingly, Norbert Muller should be appointed lead  
 11 plaintiff for the Class.  
 12  
 13

#### 14 **B. The Court Should Approve Movant’s Choice of Co-Lead Counsel**

15 The PSLRA vests authority in the lead plaintiff to select and retain counsel, subject only  
 16 to approval of the Court. *See* §21D(a)(3)(B)(v) of the Exchange Act. Thus, the Court should not  
 17 disturb the lead plaintiff’s choice of counsel unless “necessary to protect the interest” of the  
 18 plaintiff class. 15 U.S.C. §78u-4(a)(3)(B)(iii)(II)(aa); *see also In re Cavanaugh*, 306 F.3d at 733.  
 19 In the present case, Movant has retained Kirby McInerney, LLP and Glancy Binkow & Goldberg  
 20 LLP to pursue this litigation on his behalf, and will retain these firms as plaintiff’s co-lead  
 21 counsel, in the event he is appointed lead plaintiff. Kirby McInerney, LLP and Glancy Binkow &  
 22 Goldberg LLP possesses extensive experience in the area of securities litigation and have  
 23 successfully prosecuted numerous securities fraud class actions on behalf of injured investors, as  
 24 reflected by the firms’ résumés attached to the Goldberg Declaration as Exhibits D and E. Thus,  
 25  
 26  
 27  
 28

1 the Court may be assured that, by granting Norbert Muller's motion, the Class will receive the  
2 highest caliber of legal representation.

3 **V. CONCLUSION**

4 For the foregoing reasons, Movant respectfully asks the Court to grant his motion and  
5 enter an order (a) consolidating the related actions, (b) appointing Norbert Muller as lead plaintiff  
6 and (c) approving his selection of Kirby McInerney, LLP and Glancy Binkow & Goldberg LLP as  
7 co-lead counsel, and granting such other relief as the Court may deem just and proper.  
8

9 Dated: November 2, 2009

Respectfully submitted,

11 **GLANCY BINKOW & GOLDBERG LLP**

12 By: /s/ **Michael Goldberg**

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14 Michael Goldberg

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22 ***Attorneys for Movant Norbert Muller***  
23 ***and Proposed Co-Lead Counsel***  
24  
25  
26  
27  
28

**PROOF OF SERVICE VIA ELECTRONIC POSTING PURSUANT TO NORTHERN DISTRICT OF CALIFORNIA LOCAL RULES AND ECF GENERAL ORDER NO. 45**

I, the undersigned, say:

I am a citizen of the United States and am employed in the office of a member of the Bar of this Court. I am over the age of 18 and not a party to the within action. My business address is 1801 Avenue of the Stars, Suite 311, Los Angeles, California 90067.

On November 2, 2009, I caused to be served the following document:

1. **NOTICE OF MOTION AND MOTION OF NORBERT MULLER FOR CONSOLIDATION OF RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CO-LEAD COUNSEL; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF**
2. **DECLARATION OF MICHAEL GOLDBERG IN SUPPORT OF MOTION OF NORBERT MULLER FOR CONSOLIDATION OF RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CO-LEAD COUNSEL**
3. **[PROPOSED] ORDER GRANTING MOTION OF NORBERT MULLER FOR CONSOLIDATION OF RELATED ACTIONS, APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF CO-LEAD COUNSEL**

By posting this document to the ECF Website of the United States District Court for the Central District of California, for receipt electronically by the following parties:

**SEE ATTACHED SERVICE LIST**

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 2, 2009, at Los Angeles, California.

*s/Michael Goldberg*  
Michael Goldberg



*Hodges.v. Immersion Corp., et al., No. 09-cv-04073-MMC*

**SERVICE LIST**

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